

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #8	CCRB Case #: 201507317	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/11/2015 11:43 PM	Location of Incident: Evergreen Avenue and Cooper Street	Precinct: 83	18 Mo. SOL 1/11/2017	EO SOL 1/11/2017	
Date/Time CV Reported Sun, 08/30/2015 10:15 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 08/30/2015 10:15 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Mccaffrey	27107	953080	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Alexi Serpani	03257	942535	PBBN
2. POM Patryk Kaczmarczyk	10797	954012	083 PCT
3. POM Daniel Atherley	01422	956399	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Mccaffrey	Abuse: PO Kevin Mccaffrey interfered with § 87(2)(b) ability to record an incident.	
B.POM Kevin Mccaffrey	Abuse: PO Kevin Mccaffrey refused to provide his name and shield number to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint on August 30, 2015 online with the CCRB. § 87(2)(b) was walking along Evergreen Avenue near Cooper Street in Brooklyn on July 11, 2015 at approximately 11:43 p.m. § 87(2)(b) was participating in CopWatch and was on patrol with four or five other people. § 87(2)(b) observed an interaction between a group of teenagers and officers identified by the investigation to be Sgt. Alexi Serpani, PO Patryk Kaczmarczyk, PO Kevin McCaffrey, and PO Daniel Atherley. § 87(2)(b) approached the interaction in order to record what was happening. PO McCaffrey was shining his flashlight in the direction of § 87(2)(b) which interfered with his ability to record the incident and observe PO McCaffrey's name and shield number (**Allegation A**). § 87(2)(b) asked PO McCaffrey for his name and shield number. PO McCaffrey refused to provide his name and shield number to § 87(2)(b) (**Allegation B**). § 87(2)(b) provided a copy of the video he recorded of this incident (Board Review 01, Board Review 02). No arrests or summonses resulted from this incident.

The subject officer in this case, PO McCaffrey, could not be immediately identified because he refused to provide his name to § 87(2)(b). After showing the video to the other officers on the scene, the CCRB identified PO McCaffrey as the subject, but he could not be interviewed until December 3, 2015 because § 87(2)(b).

Mediation, Civil and Criminal Histories

- § 87(2)(b) was offered mediation over the phone and during his interview. § 87(2)(b) chose to have his complaint investigated.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- The NYC Office of the Comptroller responded that no notice of claim has been filed by § 87(2)(b) regarding this incident (Board Review 03).

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) with the CCRB (Board Review 04).
- PO McCaffrey has been a member of the service for three years. This is his first complaint with the CCRB (Board Review 05).

Findings and Recommendations

Allegation A – Abuse of Authority: PO Kevin McCaffrey interfered with § 87(2)(b) ability to record an incident.

Allegation B – Abuse of Authority: PO Kevin McCaffrey refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) testified that he was walking along Evergreen Avenue near Cooper Street in Brooklyn with a group of Cop Watch patrollers (Board Review 06). § 87(2)(b) observed four police officers and three teenagers standing in front a building near the corner. § 87(2)(b) crossed the street to observe and record the incident with his phone. PO McCaffrey said, "Hey cameraman, thanks for doing a great service to this country." PO McCaffrey pointed the flashlight at § 87(2)(b). § 87(2)(b) asked PO McCaffrey why he was flashing the light in his face. § 87(2)(b) asked PO McCaffrey for his name and badge number three times. After each request,

PO McCaffrey said, “It’s on my shirt.” § 87(2)(b) could not see the information on PO McCaffrey’s shirt because it was nighttime and the flashlight was in his eyes. § 87(2)(b) asked the three other officers for their names and badge numbers and they all provided them to him verbally. The four officers walked away from the scene. § 87(2)(b) started following the officers so that he could record PO McCaffrey’s face but instead he turned around and walked away.

§ 87(2)(b) provided a copy of the video he recorded during this incident (Board Review 01, Board Review 02). At the start of the video, PO McCaffrey turns on his flashlight after a female at the scene says something. PO McCaffrey is the only officer with his flashlight turned on. § 87(2)(b) steps toward PO McCaffrey. PO McCaffrey says, “Hey camera guy, thank you for your service to our country. I appreciate it.” PO McCaffrey has his flashlight pointed toward § 87(2)(b). § 87(2)(b) asks PO McCaffrey for his name and badge number. PO McCaffrey replies that it is on his shirt. § 87(2)(b) says that he cannot see it because of the flashlight being in his face. § 87(2)(b) asks PO McCaffrey for his name and badge number again. PO McCaffrey says, “Come take a look at it, it’s on my shirt.” § 87(2)(b) asks the other officers for their name and badge numbers and they provide them. The officers turn to leave the area. PO McCaffrey still has his flashlight pointed on § 87(2)(b) until he finally turns in the opposite direction.



2015-12-07_9-43-20.mp4

PO McCaffrey testified that he responded to the incident location after receiving two calls about a group of teenagers that was being disorderly (Board Review 07). PO McCaffrey and PO Atherley responded to the location and dispersed a group of 15-20 people. The group was not compliant in leaving and needed to be asked multiple times to disperse. The group eventually dispersed. After the officers left the location, PO McCaffrey received another call about an assault in progress at the same location to which he also responded. Sgt. Serpani and his driver, PO Kaczmarczyk, arrived at the same time. After the group had been dispersed, § 87(2)(b) appeared and was recording the officers. PO McCaffrey had his flashlight pointed on § 87(2)(b) because he could not see his hands and other movements he was making. § 87(2)(b) was standing in the street which is poorly lit. PO McCaffrey could not recall anything § 87(2)(b) was doing that made him fearful for his safety. § 87(2)(b) asked PO McCaffrey for his name and shield number. PO McCaffrey told § 87(2)(b) that this information was on his shirt. PO McCaffrey did not know if § 87(2)(b) seemed satisfied with this response. § 87(2)(b) made no attempt to move toward PO McCaffrey to note his name and shield number. PO McCaffrey did not know why he did not state his name and shield number to § 87(2)(b).

Sgt. Serpani testified that the incident location was dark and the officers were responding to a call about an assault which made him concerned for his safety (Board Review 10). Sgt. Serpani testified that nothing about § 87(2)(b) made him fearful for his safety. PO Kaczmarczyk testified that the incident location was dark, the vicinity of the location is a dangerous area, and the officers were outnumbered as reasons for why a flashlight may have been needed (Board Review 11). § 87(2)(b) got close to the officers when he asked them for their names and shield numbers. Other than getting too close, § 87(2)(b) was not doing anything that made PO Kaczmarczyk fearful for his safety. PO Kaczmarczyk did not have his flashlight turned on because the group of teenagers appeared to be dispersing.

Patrol Guide 208-03 states that “taking photographs, videotapes, or tape recordings” does not “constitute probable cause for arrest or detention of an onlooker unless the safety of officers

or other persons is directly endangered or the officer reasonably believes they are endangered or the law is otherwise violated” (Board Review 09). Patrol Guide 203-09 states that officers must “courteously and clearly state your rank, name, shield number, and command, or otherwise provide them, to anyone who requests you to do so” (Board Review 08).

§ 87(2)(g)

Squad: 8

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date